

An entity which would otherwise qualify for tax-exempt status on its purchases of tangible personal property for use or consumption cannot make tax-free purchases unless it has an active exemption identification number issued by the Department. See 86 Ill. Adm. Code 130.2007. (This is a GIL.)

October 20, 2005

Dear Xxxxx:

This letter is in response to your letter dated March 15, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please accept this letter as a request for a General Information Letter. Our client is requesting written confirmation on the types of documentation that are allowed by the Department of Revenue ('Department') to support an exemption from retailer's occupation tax ('ROT') for out-of-state nonprofit organizations and its members.

Facts

- Our client, hereafter, Company T, is currently registered as a retailer in Illinois. Company T provides a live entertainment show ('Show') and serves food and beverages ('Food') to its customers.
- Company T sells tickets to gain access to the Show. The price of the ticket also includes Food.
- Company T lists the price of the Show and Food on the ticket separately.
- The Show is not subject to ROT, however, it is subject to local and county amusement/admissions tax.
- Food is subject to ROT unless sold to a customer that qualified for an exemption from ROT.

- If applicable, Company T adds ROT and/or amusement tax to the ticket. Each of the appropriate taxes is listed separately on the ticket as well.
- On occasion, Company T sells groups of tickets to exempt organizations located inside and outside of Illinois.
- A contract for the sale of tickets is sent to the exempt organization to sign and send back with a deposit for the tickets. A check for the deposit comes directly from the exempt organization, not a member of the organization. The final payment is also made by the exempt organization.

Issues

- 1 Can public schools or religious organizations (e.g. STATE Public School or Catholic Church) that are located outside Illinois provide other documentation ('Documentation') (e.g. a copy of an STATE exemption certificate or a copy of an Internal Revenue Service letter, respecting federal tax-exempt status) to Company T in lieu of an active 'E' identification number to be exempt from ROT?

Conclusion

We believe that Company T should be allowed to accept other forms of Documentation in lieu of an active 'E' identification number from customers located outside Illinois to support an exemption from ROT. The Department should not require an out-of-state customer that is not located in Illinois to apply for an 'E' identification number when the out-of-state customer can provide a similar exemption certificate from its home state or other Documentation that supports that it is an exempt entity.

Discussion

Company T has recently received a number of inquiries from its out-of-state customers that request an exemption from ROT when purchasing tickets for a group. Currently, Company T only allows an exemption from ROT if a customer provides an active 'E' identification number. This has proved difficult for out-of-state customers who are not physically located in Illinois and are unaware of Illinois' laws and regulations. The primary reason for these out-of-state organizations coming to Illinois is to bring a group of people/students to attend Company T's Show.

Normally an out-of-state organization will call Company T in advance to purchase a large quantity of tickets for a Show. When the out-of-state organization learns that it will be charged ROT on the tickets, it explains that it is a tax-exempt entity and is not required to pay sales/use tax in its home state. However, based on its current policy, Company T would still charge ROT on its sale of tickets because the out-of-state organization cannot furnish an active 'E' identification number. Because of this, a number of out-of-state customers have declined purchasing tickets which has resulted in loss of revenue to Company T.

We believe that an out-of-state organization that is not required to register with the Department for ROT should not be required to register for an 'E' identification number. This is highly impractical for an organization that is located outside Illinois to apply for an 'E' identification number with the Department when the only time the organization will make a tax-free purchase is in attending Company T's Show. For example, a teacher that is purchasing tickets on behalf of a public school for her class or several classes to

attend a Show would not have any idea where to find the documentation the Department requests in Section 130.2007. The teacher does not have sufficient time to locate this information, send it to the Department, wait for a response from the Department, and then provide Company T with the 'E' identification number because the purchases are only made several weeks in advance. A more reasonable approach would be for the teacher to provide Company T with the public school's home state exemption certificate (which she would be more familiar with) along with a statement signed by a school official that the public school is purchasing the tickets for her students.

The Department has allowed other forms of documentation in lieu of those listed in the law to support an exemption from ROT. One example is the Department's treatment of sales for resale. It is presumed that a sale is not for resale if a purchaser does not provide the seller with an active registration number or resale number and a certification of the seller that a sale is for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale or resale.¹ This evidence may include documentation from the purchaser (such as a sales invoice) that the purchaser in fact resold the property. Thus, it is possible for a seller, who did not accept a timely resale certificate from a purchaser, to overcome the presumption that a sale is not for resale by providing evidence that the purchaser resold the property.

We believe the Department's policy to allow other types of evidence to support exempt sales for resale should be consistent with what is required to support an exempt sale to an out-of-state exempt organization. We are requesting that the Department confirm our belief that Company T should be able to accept other Documentation from out-of-state exempt customers in support of an exemption from ROT when those customer do not have an active 'E' identification number.

If you have any questions, please call me.

DEPARTMENT'S RESPONSE:

We understand your concerns, however, we cannot approve your request. On or after July 1, 1987, an entity which would otherwise qualify for tax-exempt status on its purchases of tangible personal property for use or consumption cannot make tax-free purchases unless it has an active exemption identification number issued by the Department. See 35 ILCS 120/1g; 35 ILCS 120/2-5(11); and 86 Ill. Adm. Code 130.2007. An out-of-State organization that wants to claim this exemption must apply for and receive an Illinois Department of Revenue issued "E-number."

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk

¹ 35 ILCS 120/2c